

**STATE OF MISSOURI
CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL CIRCUIT**

JEREMIAH W. (JAY) NIXON,)
Attorney General,)
Plaintiff,)
)
)
v.)
)
WALGREEN CO.,)
Defendant)
)

Case No: 004-01198
Division 03

ASSURANCE OF VOLUNTARY COMPLIANCE

Plaintiff, Missouri Attorney General, Jeremiah W. (Jay) Nixon, by and through his Assistant, Marvin L. Andersen, and Defendant, Walgreen Co., by and through David Bernauer, President, agree to the following:

1. **Jurisdiction:** This Court has jurisdiction over the parties and the subject matter of this Assurance of Voluntary Compliance, hereinafter "AVC." This Court is empowered to enter this AVC by agreement of the parties pursuant to § 407.030 R.S. Mo. (2000). This Court will retain jurisdiction for any future proceedings to enforce the provisions of this AVC. Venue properly rests with this Court for the approval of this AVC and for any future proceeding to enforce its provisions.

2. **Public Interest:** That the terms on which the parties have agreed to resolve this litigation, embodied in this AVC, are fair and reasonable and will adequately protect the public interest as expressed in Chapter 407 of the Revised Statutes of Missouri. The parties recommend the Court approve this AVC.

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3. **Violation:** Irrespective of § 407.030.1 R.S.Mo. (2000), Walgreens admits that on the forty-five (45) occasions alleged in Plaintiff's Petition, Walgreens, within the state of Missouri, sold a tobacco product to a person under the age of eighteen (18) years. Walgreens maintains that the forty-five (45) occasions in which sales were made to minors were inadvertent and in violation of company policy.

4. **Severability:** If any provision or provisions of this AVC is or are declared invalid by a court of competent jurisdiction, the rest of this AVC shall remain in full force and effect and shall not be affected by such declaration.

5. **Non-Approval:** Walgreens shall not represent to any person, natural or otherwise, that the Missouri Attorney General sanctions, endorses, or approves of any methods, acts, uses, practices, or policies undertaken by or on behalf of Walgreens.

6. **Changes:** No changes shall be made to this AVC unless made in writing and signed by all parties hereto.

7. **Scope of AVC:** This AVC embodies the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein. This AVC is applicable only to Walgreens stores in the State of Missouri.

8. **Governing Law:** This AVC is entered into pursuant to the laws of the State of Missouri and shall be governed by and construed in accordance with same.

9. **Definitions:** For purposes of this AVC, the following terms shall have the following meanings:

- a. "Walgreens" shall mean Walgreen Co. The terms of this Assurance of Voluntary Compliance shall apply to every Walgreens store in Missouri, however or by whomever owned and operated.
- b. "Attorney General" shall mean the Missouri Attorney General.
- c. "Petition" shall mean the Petition in the underlying lawsuit, *Jeremiah W. (Jay) Nixon v. Walgreen Co.*, Twenty-Second Judicial Circuit Court of Missouri, Case Number 004-1198.
- d. "Tobacco products" shall mean any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.
- e. "Minor" shall mean any individual who, on the date of the purchase or attempted purchase, has not attained the age of eighteen (18) years.
- f. "Distribute" shall mean any conveyance to the public by sale, barter, gift, or sample.
- g. "Proof of age" shall mean a driver's license or other government-issued means of identification that contains both the birth date and picture of the individual, and that appears to be valid on its face.

10. **Conduct Prohibited:**

- a. Walgreens shall not sell, provide, or distribute any tobacco product or rolling papers to any minor, or sell any individual cigarettes to any person in this state.
- b. Walgreens shall not violate any provision of state law regulating the sale or distribution of tobacco products which is now in effect or may be in effect in the future.

11. **Conduct Required:** Walgreens shall do the following:

a. Walgreens shall cause a sign to be prominently displayed in a conspicuous place at every display from which tobacco products are sold that shall:

(1) Contain in red lettering at least one-half (1/2)-inch high on a white background the following: It is a violation of state law for cigarettes or other tobacco products to be sold or otherwise provided to any person under the age of eighteen (18) years or for such person to purchase, attempt to purchase, or possess cigarettes or other tobacco products; and

(2) Include a depiction of a pack of cigarettes at least two (2) inches high defaced by a red diagonal diameter of a surrounding red circle, and the words, Under 18.

b. Walgreens shall ensure that it has a tobacco-compliance employee training program in place to provide its employees with information regarding its policy prohibiting the sale of tobacco products to minors. Such training program must be administered to all employees who sell tobacco products to the general public.

c. Walgreens shall require an acknowledgment by its employees who sell tobacco products that the employees have been trained and understand Walgreens' policy prohibiting the sale of tobacco products to minors.

d. Walgreens shall not distribute, or permit its employees to distribute, tobacco products to any person who appears to be under the age of twenty-seven (27) without first requiring proof of age from that customer and verifying that the customer is not a minor, however failure to require proof of age will not be a violation of this AVC if the customer is 18 years old or older.

12. **Compliance Monitoring:** The Attorney General is hereby authorized to conduct, and Walgreens has agreed not to object to their conducting, compliance checks to monitor Walgreens' compliance with this AVC, whether or not the person performing the check identifies himself or herself as a state employee or agent. Walgreens agrees that the Attorney General (or other agency or department of the State of Missouri) may perform such checks without violation of Missouri Rule 4-4.2 prohibiting *ex parte* contacts with persons represented by counsel. All other legal and ethical standards shall apply.

Compliance checks or inspections used for the purpose of enforcing the terms of this AVC :

- a. Shall use a minor having a youthful appearance, and the minor, if a male, shall not have facial hair or a receding hairline and if a female, shall not wear excessive makeup or excessive jewelry;
- b. The minor shall carry his or her own identification showing the minor's correct date of birth and shall, upon request, produce such identification to the seller of the tobacco product;
- c. The minor shall answer truthfully any questions about his or her age and shall not remain silent when asked questions regarding his or her age;
- d. The minor shall not lie to the seller of the tobacco product to induce a sale of tobacco products;
- e. The minor shall not be employed on an incentive or quota basis;
- f. Records shall be maintained of each visit, to a Walgreens store for the purpose of enforcing the terms of this AVC, for a period of at least one year following the incident, regardless of whether a violation occurs at each visit.

g. A photocopy shall be made of the minor's valid identification showing the minor's correct date of birth and such copies shall be maintained for a period of at least one year following an incident;

h. Reasonable steps shall be taken to contact the owner or manager of the establishment within 48 hours of an alleged violation, and any additional written notification shall be sent no later than one week after the alleged violation.

13. **Payments:** Walgreens shall, within ten (10) days of the date of the approval of this AVC by the Court, pay the State of Missouri the sum of forty-six thousand dollars (\$46,000.00). Eleven thousand five hundred dollars (\$11,500) shall be in settlement of claims for civil penalties pursuant to § 407.100.6 R.S.Mo. (2000), and thirty-four thousand five hundred dollars (\$34,500) shall be in settlement of claims for the Attorney General's costs of investigation and prosecution of this matter, which are provided for under the statutory authority of § 407.130 R.S.Mo. (2000).

14. **Notification of AVC Terms:** Walgreens shall, within thirty (30) days of the Court's approval of this AVC, advise all Walgreens' Missouri store managers of the terms of and the company's obligations under this AVC. Walgreens shall advise the Attorney General with respect to its compliance with this provision within seventy-five (75) days of the date of this AVC.

15. **Further Proceedings:** For future violations, the Attorney General may institute proceedings which may include, but are not limited to, an action to obtain a civil penalty pursuant to § 407.030 R.S.Mo. (2000) or an action brought pursuant to § 407.100 R.S.Mo. (2000).

16. **Acknowledgment of Settlement:** The Attorney General acknowledges that this AVC constitutes an agreement for a binding, final, and complete settlement of all claims of unfair trade practices arising out of or relating to 1) the distribution of tobacco products to minors that were alleged within the Petition and are the subject of paragraph 3 of this AVC; 2) all sign violations alleged in the Petition; and 3) any and all claims related to the sale of tobacco products to minors or the failure to post signs that could have been brought by the Attorney General as of the date of the Court's Order approving this AVC, and the same shall be accepted by the Attorney General in full settlement and satisfaction of such claims. Accordingly, the Attorney General agrees that he will not institute any civil action or proceeding against Walgreens, including, but not limited to any action seeking injunctive relief, fines, penalties, restitution or costs, for any distribution of tobacco products or failure to post signs prior to the date of approval of this AVC by the Court, including but not limited any action related to the forty-five sales to minors which are alleged in the Petition and which are the subject of paragraph 3 of this AVC, as well as any and all sign violations alleged in the Petition, other than an action or proceeding to enforce the terms and provisions of this AVC.

17. **Dismissal with Prejudice and Enforcement:** Upon approval of this AVC by the Court, the underlying action shall be dismissed with prejudice, except that the Court shall retain jurisdiction pursuant to § 407.030 R.S.Mo. (2000).

18. **Court Costs:** No costs shall be assessed or paid in this action other than those designated in paragraph 13 above.

IN WITNESS WHEREOF, the parties hereto have caused this AVC to be executed in their respective names this ____ day of _____, 2001.

JEREMIAH W. (JAY) NIXON
Attorney General

By: _____
Marvin L. Andersen
Assistant Attorney General

WALGREEN CO.,

By: _____
David Bernauer, President

Approved by Counsel for Defendant

J. William Newbold

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